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**Case No. 7:11CV00100**  
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**MEMORANDUM OPINION**  
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By: Glen E. Conrad  
Chief United States District Judge  
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<sup>2</sup> Electronic records of the Supreme Court of Virginia available online at: <http://208.210.219.132/solar/select2.jsp;sessionId=0000LSN3VNP5MT4Z2RNHZDP1FKQ:ulnfn1uq>

presented to the Supreme Court of Virginia as required for exhaustion, his petition would be dismissed. Hubbard responded, but offered nothing to refute the evidence that he has not yet presented his current claims to the Supreme Court of Virginia.

Under 28 U.S.C. § 2254(b), a federal court cannot grant a habeas petition unless the petitioner has exhausted the remedies available in the courts of the state in which he was convicted. It appears that Hubbard could still file a habeas petition in the Supreme Court of Virginia. See Va. Code Ann. § 8.01-654(a)(1). Therefore, the court concludes that his § 2254 petition must be dismissed without prejudice, based on his failure to exhaust available state court remedies.<sup>3</sup> See Slayton v. Smith, 404 U.S. 53 (1971) (requiring federal habeas court to dismiss § 2254 petition without prejudice if petitioner has not exhausted available state court remedies). An appropriate order will issue this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to petitioner.

ENTER: This 28<sup>th</sup> day of March, 2011.

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Chief United States District Judge

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<sup>3</sup> The petitioner may refile his federal habeas petition if he is still unsuccessful in obtaining relief *after* presenting his claims to the Supreme Court of Virginia. The petitioner is advised, however, that the time for filing a state or federal habeas petition is limited. See 28 U.S.C. § 2244(d).